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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71259; File No. SR-Topaz-2014-01]

Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees
January 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 2, 2014, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the “Exchange” or “Topaz”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees to amend and clarify its API session fees for Electronic Access Members. The text of the proposed rule change is available on the Exchange’s Internet website at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to amend and clarify the Exchange's API session fees for Electronic Access Members ("EAMs").³ On December 16, 2013 the Exchange filed an immediately effective rule change that established various non-transaction fees, including fees for Market Makers and EAMs that connect to Topaz via an Application Programming Interface ("API") or Financial Information eXchange ("FIX") session.⁴ In that filing the Exchange established a framework for EAMs to connect to both Topaz and the International Securities Exchange, LLC ("ISE") through a single FIX session for a single fee.⁵ While the Exchange also established fees for EAM and Market Maker API sessions, the Exchange did not propose to allow Members that connect to the Exchange via API to be able to also connect to the ISE through the same connectivity offering. For EAM API sessions only, the Exchange is now proposing a similar framework to the framework adopted for FIX sessions. In particular, the Exchange now proposes to allow EAMs to connect to both Topaz and the ISE

³ The Exchange uses an open API which Members program to in order to develop applications that send trading commands and/or queries to, and receive broadcasts and/or transactions from, the trading system. The EAM API receives orders from Members, tracks activity in the underlying markets, when applicable, executes trades in the matching engine, and broadcasts trade details to the participating Members. Each login allows the user to enter orders and perform other miscellaneous functions.

⁴ See Exchange Act Release No. 71149 (December 19, 2013), 78 FR 78447 (December 26, 2013) (Topaz-2013-16).

⁵ The Exchange notes that Market Makers, *i.e.*, PMMs and CMMs, must connect to the Exchange via API as the FIX connection does not supporting quoting. Both Market Makers and EAMs have the option to connect to the Exchange via API.

through a single API session. For EAMs that are also members of the ISE and wish to connect to both exchanges, the Exchange will charge a monthly fee of \$250 per session for the first five sessions and \$100 per session for the sixth and additional sessions. This is consistent with the tiered pricing and level of fees on the ISE.⁶ Similar to the current pricing for FIX sessions, the Exchange is proposing to charge a higher fee for the first five sessions for EAMs that connect to both Topaz and the ISE as these Members will be allowed to access both exchanges through a single API session. As previously proposed, EAMS [sic] that choose to connect only to Topaz via API will be continue to be charged a monthly API session fee of \$100 per session, which is equal to the incremental fee for the sixth and additional sessions for EAMs that connect to both Topaz and the ISE. The Exchange is not proposing to alter how it charges for Market Maker API sessions as Topaz has opted for a simpler framework for Market Maker API fees than is currently in place on the ISE.⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁹ in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange Members and other persons using its facilities. The Exchange believes that the proposed modifications to its EAM API session fees are reasonable as they will result in lower overall fees

⁶ See ISE Schedule of Fees, Section VII, Trading Application Software, FIX Session/API Session Fees.

⁷ For example, the ISE charges different fees depending on the functionality used by a Market Maker, such as quoting, order entry, or “listening” to system broadcasts, and provides for limits on the numbers of quotes per day that may be submitted without incurring an additional session fee.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

being charged to Topaz members that are also members of the ISE. The Exchange believes that the proposed API session fees are equitable in that they apply equally to all EAMs that wish to connect to both Topaz and the ISE via API. The Exchange notes that, while EAMs that connect to both exchanges will be charged a higher rate than Members that only connect to Topaz, this rate is lower than the combined rate that would be applicable if EAMs were forced to pay separate fees to connect to each market. Moreover, the Exchange believes that it is fair and equitable to charge a higher fee to EAMs that wish to connect to both Topaz and the ISE as such Members will benefit from access to both exchanges. Furthermore, the Exchange does not believe that it is unfairly discriminatory to allow EAMs to connect to both Topaz and the ISE through a single API session while not affording the same treatment to Market Makers. The Exchange notes that its Market Maker API fees are structured to be simpler, and lower than, the corresponding fees of the ISE.¹⁰ The Exchange believes that its rates for Market Maker API sessions are favorable to Topaz Market Makers as currently structured.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹¹ the Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change is pro-competitive as it effectively reduces the fees for EAMs that connect to both Topaz and the ISE via API. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to

¹⁰ On the ISE, fees for Market Maker API sessions range from \$175 per month for listening only, to \$750 per month for order entry and listening, and \$1,000 per month for quoting, order entry and listening. Market Makers are also charged for an additional session if they submit more than 1,500,000 quotes per day. See ISE Schedule of Fees, VII. Trading Application Software, C. FIX Session / API Session Fees.

¹¹ 15 U.S.C. 78f(b)(8).

competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² and subparagraph (f)(2) of Rule 19b-4 thereunder,¹³ because it establishes a due, fee, or other charge imposed by Topaz.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Topaz-2014-01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-Topaz-2014-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File No. SR-Topaz-2014-01, and should be submitted on or before [INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

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¹⁴ 17 CFR 200.30-3(a)(12).